

COMBINED TRANSMITTAL OF APPEAL BRIEF TO THE BOARD OF PATENT
APPEALS AND INTERFERENCES & PETITION FOR EXTENSION OF TIME
UNDER 37 C.F.R. 1.136(a) (Small Entity)

Docket No.
MBI-1085

In Re Application Of: Dunn et al.

Serial No.
10/053,754

Filing Date
1/22/02

Examiner
Purol

Group Art Unit
3634

Invention: SUN SHADE FOR VEHICLES



TO THE COMMISSIONER FOR PATENTS:

This is a combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences and petition under the provisions of 37 CFR 1.136(a) to extend the period for filing an Appeal Brief.

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06/16/2004 SSANDARA 00000005 10053754

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3634

Invention: **SUN SHADE FOR VEHICLES**

TO THE COMMISSIONER FOR PATENTS:

This combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences and petition for extension of time under 37 CFR 1.136(a) is respectfully submitted by the undersigned:



Signature

Dated: **June 8**, 2004

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Rebekah L. Mitchell

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DOCKET NO.: MBI-1085

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Dunn et al.**

Serial No.: **10/053,754**

Group Art Unit: **3634**

Filed: **January 22, 2002**

Examiner: **Purol**

For: **SUN SHADE FOR VEHICLES**

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6/9/04

Rebekah L. Mitchell
Rebekah L. Mitchell (Person Mailing Correspondence)

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPEAL BRIEF

This is an appeal from the Final Rejection dated 11/23/2003. The Appellant respectfully submits that the Final Rejection was made in error, and should be overturned upon *de novo* review, for the reasons set forth below.

I. The Real Party in Interest

The Real Party in Interest is Munchkin, Inc. a corporation based in Van Nuys, California.

II. Related appeals and interferences

No related appeals or interferences exist.

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III. The Status of the Claims

Claims 1-27, 30, 33-41, and 43-45 are pending in this Application. All claims stand rejected, and all rejections are being appealed.

IV. The Status of Any Amendments Filed After Final Rejection.

No Amendment after Final Rejection has been filed

V. Summary of the Invention

In general this invention provides a sunshade for a vehicle that is constructed so as to facilitate controlled, precise opening, closing and adjustment of the sunshade, and also can provide educational and entertainment options for passengers, such as children. The instant invention overcomes difficulties found in the prior art in positioning and adjusting the sunshade. It also alleviates some of the potential harm that might be caused during the operation of a conventional sunshade device. Additionally, in one embodiment the sunshade is designed to provide entertainment to passengers, such as a game, without occupying much space.

Fig. 1 shows a perspective view of a vehicle sun shade assembly that is constructed according to a preferred embodiment of the invention, shown in a first, retracted position. Fig. 2 shows the opposite side of the assembly. Suction cups 16 and 28 are used to attach the device to a car window shown in Fig. 3. Housing 12 includes for aesthetic and safety purposes a pair of rounded projections 18 that extend upwardly from the longitudinal axis of housing 12 in order to prevent accidental disengagement of suction cups 16 during use, which could break the vacuum seal of one or more of the suction cups 16 and cause sun shade 10 to swing out of position or to fall.

The controlled retraction mechanism is best illustrated in Figs. 4 and 5. The retraction mechanism includes a biasing mechanism for biasing the drum member so that the shade element is urged toward a first, retracted position. There is also an arresting mechanism, which is constructed and arranged so as to permit the drum member to be stopped when the shade element

is in the second, extended position and in any of a plurality of predetermined intermediate positions that are between the first, fully retracted position and the second, extended position. The arresting mechanism also has a controlled retraction structure for permitting a consumer to partially retract the shade element by a controlled predetermined distance. This permits the shade element to be utilized in more than one position wherein it is not being actively biased toward the retracted position.

Fig. 6 shows an example of the extended shade with an educational game display. Consumers can utilize marker 38 to mark on the map the state of the license plate just observed. Other games could be played on the shade as well, such as tic-tac-toe or checkers.

VI. Issues on Appeal

The Appellant believes that the various issues to be considered on appeal may be concisely summarized as follows:

Issue 1: Have claims 1, 2, 9-18, 27, 41, 43, and 44 been improperly rejected under 35 U.S.C. §102(b) as being clearly anticipated by U.S. Patent No. 5,226,467 to Lii?

Issue 2: Have claims 3-8, and 23-26, been improperly rejected under 35 U.S.C. §103(a) based on a proposed combination U.S. Patent No. 5,226,467 to Lii in view of U.S. Patent No. 5,330,251 to McGuire?

Issue 3: Have claims 19-22, 30, 33-40, and 45 been improperly rejected under 35 U.S.C. §103(a) based on a proposed combination of U.S. Patent No. 5,226,467 to Lii in view of U.S. Patent No. 4,812,748 to Park?

V. Grouping of Claims

The Appellant respectfully submits that claims 1, 2, 9-18, 27, 41, 43, and 44 each stands or falls alone and, for the reasons set forth in the arguments below, that each claim be considered separately. No claims shall stand or fall together.

The Appellant respectfully submits that claims 3-8, and 23-26 each stands or falls alone and, for the reasons set forth in the arguments below, that each claim be considered separately. No claims shall stand or fall together.

The Appellant respectfully submits that claims 19-22, 30, 33-40, and 45 each stands or falls alone and, for the reasons set forth in the arguments below, that each claim be considered separately. No claims shall stand or fall together.

VI. Argument -- The Rejection and the Appellant's Response.

Issue 1: Have claims 1, 2, 9-18, 27, 41, 43, and 44 been improperly rejected under 35 U.S.C. §102(b) as being clearly anticipated by U.S. Patent No. 5,226,467 to Lii?

U.S. Patent No. 5,226,467 to Lii (hereinafter "Lii") fails to meet every limitation of claims 1, 2, 9-18, 27, 41, 43, and 44. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

The Examiner uses Lii to reject claims 1, 2, 9-18, 27, 41, 43, and 44. The Examiner's rejection is reproduced in full below:

"Claims 1, 2, 9-18, 27, 41, 43, 44 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lii'467. Lii '467 discloses the claimed invention

including a housing 8, a drum member 1, a shade element 12, a biased retraction and arresting mechanism 2, 5, 4, 3, 61, 615, 71, 72, 70, 7, 32, 611, 31, a first mounting means 82, 83.”

Independent claims 1, 27, and 41 are reproduced here for convenience:

Claim 1. A sunshade for a vehicle, comprising:

a housing;

first mounting means for mounting said housing on a vehicle window;

a drum member, rotatably mounted with respect to said housing;

a flexible, weblike shade element, said shade element being positioned so as to be wrapable about said drum member; and

a retraction mechanism for enabling said shade element to be moved from a first, fully retracted position wherein most of said shade element is wrapped about said drum member and a second, extended position wherein said shade element is at least partially unwrapped from said drum member, said retraction mechanism comprising:

a biasing mechanism for biasing said drum member so that said shade element is urged toward said first, retracted position, and

an arresting mechanism, said arresting mechanism being constructed and arranged so as to permit said drum member to be stopped when said shade element is in said second, extended position and in any of a plurality of predetermined intermediate positions that are between said first, fully retracted position and said second, extended position, said arresting mechanism further comprising controlled retraction structure for permitting a consumer to partially retract said shade element by a controlled predetermined distance; whereby said weblike shade element may be utilized in more than one position wherein it is not being actively biased toward the retracted position.

Claim 27. A sunshade for a vehicle, comprising:

a housing;

first mounting means for mounting said housing on a vehicle window;

a drum member, rotatably mounted with respect to said housing;

a flexible, weblike shade element, said shade element being positioned so as to be wrapable about said drum member;

a retraction mechanism for enabling said shade element to be moved to any one of a number of different positions including a first, retracted position wherein most of said shade element is wrapped about said drum member and a second, extended position wherein said shade element is at least partially unwrapped from said drum member; and wherein

said housing is shaped and sized so as to preclude a person from being able to touch a portion of said shade element that is wrapped about said drum member, whereby the possibility of the person's fingers being pinched is reduced.

Claim 41 A sunshade for a vehicle, comprising:

a housing;

first mounting means for mounting said housing on a vehicle window;

a drum member, rotatably mounted with respect to said housing;

a flexible, weblike shade element, said shade element being positioned so as to be wrapable about said drum member; and

a retraction mechanism for enabling a consumer by depressing a mechanical control element using just one hand to move the shade element to any one of a plurality of different predetermined indexed positions including a first, retracted position wherein most of said shade element is wrapped about said drum member, a second, extended position wherein said shade element is at least partially unwrapped from said drum member and at least one predetermined

indexed intermediate position.

Lii discloses a windshield blind system. The windshield blind system has a tube 1, twin plugs 2, 3, elongated rod 4, a long coil spring 5, two end caps 60, 61, a push block 7 and a curved cap 8 as its main components. Lii uses an "opaque plastic film 12" fitted between slits 10 and 11 as the shade element. See col. 2, lines 1-4. Plastic film 12 is pulled out to its desired length in order to extend the shade element. Push block 7 is lifted up in order to rewind, or retract plastic film 12. See Col. 3, lines 23-52.

Claims 1, 27, and 41 require "first mounting means for mounting said housing on a vehicle window." Lii teaches using the blind with a windshield. It appears from Lii's disclosure, and the Examiner's rejection, that the mounting means would be 82 and 83. Elements 82 and 83 are bracket assemblies. See col. 2, lines 51-52. Lii does not go into any detail as to where bracket assemblies 82 and 83 are attached in the vehicle. However, it would appear that the bracket assemblies would have to be placed somewhere over the windshield. Claim 1 requires means for mounting said housing on a vehicle window. Lii's bracket assemblies do not appear to be used for mounting on a vehicle window and instead appear to be used for mounting over a vehicle windshield. The Appellant respectfully submits that Lii does not meet the limitation of having "first mounting means for mounting said housing on a vehicle window."

Claims 1, 27, and 41, further require "a flexible, weblike shade element." Lii does not disclose a flexible, weblike shade element. Instead, Lii discloses using an "opaque plastic film 12." Nowhere in Lii's disclosure is there mention of a "weblike" film. The Appellant respectfully submits that Lii does not meet the limitation of having a flexible, weblike shade element as required by independent claims 1, 27, and 41.

Additionally, Claim 1 requires an "arresting mechanism, said arresting mechanism being constructed and arranged so as to permit said drum member to be stopped when said shade element is in said second, extended position and in any of a plurality of predetermined intermediate positions that are between said first, fully retracted position and said second, extended position, said arresting mechanism further comprising controlled retraction structure for

permitting a consumer to partially retract said shade element by a controlled predetermined distance.” Lii discloses pulling a shade element 12 to a fully retracted position, and a retraction mechanism activated by lifting push block 7. Claim 1 requires that the arresting mechanism includes controlled retraction structure for permitting a consumer to partially retract the shade element by a controlled predetermined distance. For example, in the Appellant's preferred embodiment the controlled retraction structure permits the consumer to cause retraction of the shade element by a distance that is equal to exactly one rotation of the drum element by depressing a button by a first amount. The retraction structure prevents retraction of the sunshade by any distance in excess of this predetermined amount of retraction. In other words, when controlled retraction is desired the controlled retraction structure prevents retraction from occurring that is more or less than the predetermined amount.

Lii discloses a retraction mechanism in which a user is required to linearly slide a control element in order to retract the windshield blind. It permits partial retraction of the windshield blind, but not by a controlled predetermined distance as is set forth in independent claim one. To cause partial retraction in Lii a consumer would have to slide the control element in one direction and then quickly reverse it back to the neutral position. The amount of retraction that would occur would depend upon how quickly the action was performed. In other words, the degree of retraction that would occur is not controlled. The Appellant submits that Lii does not meet the limitation of having an “arresting mechanism, said arresting mechanism being constructed and arranged so as to permit said drum member to be stopped when said shade element is in said second, extended position and in any of a plurality of predetermined intermediate positions that are between said first, fully retracted position and said second, extended position, said arresting mechanism further comprising controlled retraction structure for permitting a consumer to partially retract said shade element by a controlled predetermined distance.” The Appellant, therefore respectfully requests that the rejection of claim 1 be removed. The Appellant further submits that claims 2, and 9-18 are allowable by virtue of their dependence upon allowable independent claim 1.

Additionally, dependent claim 9 requires “a spring that is functionally interposed between

said housing and said drum member.” See spring element 40. Lii does not disclose having a spring that is functionally interposed between the housing and drum member. Lii teaches using a spring (coil spring 5), however the coil spring is not interposed between the housing and drum member. Instead, coil spring 5 is located underneath curved cap 8. The Appellant submits that Lii does not meet the required limitations of claim 9.

Furthermore, the Appellant also suggests that Lii does also not meet the limitations of claims 10-18. The Examiner has suggested that Lii meets the limitations of the claims, however it is unclear as to how this is accomplished by Lii. The Examiner has merely provided a list of components used in the Lii disclosure. This list of components provided by the Examiner for the biased retraction and arresting mechanism comprises; 2 (plug), 5 (coil spring), 4 (elongated rod), 3(plug), 61 (end cap), 615 (cavity), 71 (upper recess), 72 (central groove), 70 (lower recess), 7 (push block), 32 (short rod), 611 (toothed rim), 31 (toothed rim). The Examiner has not addressed the details of these claims, for instance claims 14-18 require the limitation of having a “first clutch member.” The Examiner has not pointed to any feature in Lii that meets the limitation of having a “first clutch member.” The Appellant respectfully submits that the rejection provided by the Examiner does not demonstrate how Lii teaches the limitations of these claims.

Regarding claim 10, the Examiner does not explain how Lii teaches “a control element, actuatable by a consumer, for disengaging said arresting mechanism, whereby said drum member will be urged by said biasing mechanism to cause said shade element to retract.” The Examiner never explicitly identifies which elements of Lii meet these limitations of claim 10. The Appellant respectfully submits that Lii does not meet the limitations of claim 10 and that the rejection be removed.

Regarding claim 11, the Appellant submits that Lii does not meet the limitation of having a control element and a arresting mechanism constructed and arranged “to actuate said control element in a first manner so as to cause said shade element to be retracted completely to said first, retracted position or in a second manner, so as to cause said controlled retraction structure to reengage in order to stop the retraction of said shade element in one of said intermediate

positions.” Lii does not disclose a “controlled retraction structure.” Furthermore, the Examiner has failed to demonstrate how Lii meets the limitations of claim 11. The Appellant respectfully submits that Lii does not meet the limitations of claim 11 and that the rejection be removed.

Regarding claim 12, the Appellant submits that Lii does not meet the limitation of having a control element and arresting mechanism “constructed and arranged so that said first manner comprises actuating said control element for a first period of time and said second manner comprises actuating said control element for a second period of time that is less than said first period of time.” The Examiner points to no support for this limitation and Lii is silent with respect to the length of time a control element is actuated. The Examiner does not even mention a “control element” in the rejection. The Appellant respectfully submits that Lii does not meet the limitations of claim 12 and that the rejection be removed.

Regarding claim 13, the Appellant submits that Lii does not meet the limitation of having a control element that comprises a mechanical element “that is depressible by the consumer, and said control element and said arresting mechanism are constructed and arranged so that said first manner comprises depressing said control element by a first distance and said second manner comprises depressing said control element by a second distance that is less than said first distance.” Lii is silent to as to varying the distance in which a control element is moved based upon a desired position of a shade. Furthermore, the Examiner fails to point to any section of Lii where this limitation would be met. The Appellant respectfully submits that Lii does not meet the limitations of claim 13 and that the rejection be removed.

Regarding claim 14, Appellant submits that Lii does not disclose a “first clutch member” or a “second clutch member.” The Appellant further submits that Lii does not disclose having controlled retraction structure that “comprises releasable structure for preventing rotation of said first clutch member with respect to said housing.” Additionally, the Examiner does not point to any structure that would correspond to these limitations. The Appellant respectfully submits that Lii does not meet the limitations of claim 14 and that the rejection be removed.

Regarding claim 15, the Appellant submits that Lii does not disclose a control element that comprises “a mechanical element that is depressible by the consumer, and wherein said

retraction mechanism is constructed and arranged so that depression of said mechanical element by the consumer by a first distance will disengage said first clutch member from said second clutch member, whereby said shade element will be permitted to retract.” Lii does not make mention of either a first clutch member or a second clutch member. Furthermore Lii does not disclose disengaging a first clutch member from a second clutch member. Additionally, the Examiner does not point to any “first clutch member” or a “second clutch member.” The Appellant respectfully submits that Lii does not meet the limitations of claim 15 and that the rejection be removed.

Regarding claim 16, the Appellant submits that Lii does not disclose a “controlled retraction structure [that] comprises structure for stopping rotation of said first clutch member with respect to said housing after permitting a limited amount of such rotation to occur.” Lii does not at any point disclose having a “first clutch member” or “permitting a limited amount of...rotation to occur.” Furthermore, the Examiner has pointed to no language in Lii that makes mention of these limitations. The Appellant respectfully submits that Lii does not meet the limitations of claim 16 and that the rejection be removed.

Regarding claim 17, the Appellant submits that Lii does not disclose a “controlled retraction structure [that] is constructed and arranged so as to release said releasable structure for preventing rotation of said first clutch member with respect to said housing when said mechanical element is depressed by the consumer by a second distance that is less than said first distance, whereby said first clutch member will be permitted to rotate a limited distance in order to partially retract said shade element before being stopped by said controlled retraction structure.” Lii makes no mention of a clutch member, or of any specific details of partially retracting a shade element. Furthermore, the Examiner has not pointed to any section of Lii that would disclose these limitations. The Appellant respectfully submits that Lii does not meet the limitations of claim 17 and that the rejection be removed.

Regarding claim 18, the Appellant submits that Lii does not disclose a controlled retraction structure that is “constructed and arranged to stop rotation of said first clutch member with respect to said housing after permitting no more than one rotation of said clutch member

with respect to said housing to occur.” Lii makes no mention of a clutch member or of stopping a rotation of a clutch member after a limited amount of rotation. Furthermore, the Examiner has not pointed to any section of Lii that would disclose these limitations. The Appellant respectfully submits that Lii does not meet the limitations of claim 18 and that the rejection be removed.

With respect to claim 27, in addition to the reasons noted above, the Appellant believes independent claim 27 and dependent claim 2 are allowable for the following reasons. Independent claim 27 and dependent claim 2 require the limitation wherein the “housing is shaped and sized so as to preclude a person from being able to touch a portion of said shade element that is wrapped about said drum member, whereby the possibility of the person's fingers being pinched is reduced.” Lii discloses a curved cap 8 that only extends for a small fraction around the circumference of the support drum. Because it leaves most of the circumference of the drum and the sunshade wrapped about the drum uncovered, a person would clearly be able to touch a portion of the shade element that is wrapped about the drum member. Accordingly, this reference does not anticipate independent claim 27 or dependent claim 2. Moreover, there is no disclosure or suggestion that would provide any incentive for the person having ordinary skill to modify the structure disclosed in the reference in order to provide a housing that does preclude a person from being able to touch a portion of the shade element that is wrapped about the drum member. The Appellant submits that Lii does not meet the limitation wherein the “housing is shaped and sized so as to preclude a person from being able to touch a portion of said shade element that is wrapped about said drum member, whereby the possibility of the person's fingers being pinched is reduced.” The Appellant respectfully requests that the rejection of independent claim 27 and dependent claim 2 be removed.

In addition to the reasons noted above, the Appellant believes that independent claim 41 is allowable for the following reasons. Claim 41 requires a “retraction mechanism for enabling a consumer by depressing a mechanical control element using just one hand to move the shade element to any one of a plurality of different predetermined indexed positions.” In Lii, retraction of the sunshade is initiated by sliding a control element, push block 7, in an upward or downward

direction. See col. 3, lines 37-39. This sliding motion does not meet the limitation of “depressing a mechanical control element” as is set forth in claim 41. There is a fundamental operable difference between the sliding motion disclosed in the reference and the depressing motion that is set forth in claim 41. Depressing a control element can be accomplished by using one hand, while simultaneously sliding a control element and bracing the rest of the apparatus can only be accomplished by using both hands. Accordingly, the sunshade that is set forth in claim 41 is structurally different from that set forth in the reference, with clear functional advantages associated with the structural difference. The Appellant submits that Lii does not meet the limitation of a “retraction mechanism for enabling a consumer by depressing a mechanical control element using just one hand to move the shade element to any one of a plurality of different predetermined indexed positions” as required by independent claim 41. Furthermore claims 43, and 44 should be allowed by virtue of their dependence upon claim 41.

Additionally, regarding claim 43, the Appellant submits that Lii does not disclose a “retraction mechanism [that] is constructed and arranged to permit the consumer to actuate said control element in a first manner so as to cause said shade element to be retracted completely to said first, retracted position or in a second manner, so as to cause said retraction mechanism to reengage in order to stop the retraction of said shade element in said predetermined indexed intermediate position.” Lii does not disclose retracting a shade to a predetermined indexed intermediate position, or of retracting a shade in more than one fashion. Furthermore, the Examiner has not pointed to any section of Lii where this is disclosed. The Appellant respectfully submits that Lii does not meet the limitations of claim 43 and that the rejection be removed.

Regarding claim 44, the Appellant submits that Lii does not disclose a “retraction mechanism [that] is constructed and arranged so that said first manner comprises depressing said mechanical control element by a first distance and said second manner comprises depressing said control element by a second distance that is less than said first distance.” Lii does not disclose depressing a control element by more than one distance. Furthermore, the Examiner fails to discuss this limitation of the claim in the rejection. The Appellant respectfully submits that Lii

does not meet the limitations of claim 44 and that the § 102(b) rejection be removed.

The Appellant respectfully requests that the 35 U.S.C § 102 (b) rejection based upon Lii, of claims 1, 2, 9-18, 27, 41, 43, and 44 be removed. Lii fails to meet each and every limitation of the claims. The Appellant has pointed to numerous instances in the claims where Lii fails to provide adequate disclosure to meet the limitations. The Appellant respectfully request the removal of the rejection of claims 1, 2, 9-18, 27, 41, 43, and 44 based upon Lii.

Issue 2: Have claims 3-8, and 23-26, been improperly rejected under 35 U.S.C. §103(a) based on a proposed combination U.S. Patent No. 5,226,467 to Lii in view of U.S. Patent No. 5,330,251 to McGuire?

The Appellant first notes that claims 3-8, depend on claim 1, the Appellant submits that claims 3-8, should be allowed by virtue of their dependency upon improperly rejected independent claim 1. The Appellant contends that the rejection based upon Lii is improper for the reasons set forth above under the section headed Issue 1. Claims 3-8 depend either directly or indirectly from independent claim 1 and are therefore allowable due to their dependency upon an improperly rejected independent claim.

The Appellant further argues that the combination of Lii in view of U.S. Patent No. 5,330,251 to McGuire (hereinafter “McGuire”) is also improper with respect to claims 4-8, and 23-26.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 265 USPQ 494, 496 (CCPA 1970).

The Examiner states that McGuire “discloses a retractable weblike vehicle apparatus comprising a marker element 27, wherein, to incorporate this teaching into the sunshade of Lii ‘467 for the purpose of entertainment or aesthetics would have been obvious to one of ordinary skill in the art.” The Appellant first notes that element 27 of McGuire is not a marker element. McGuire states that element 27 is a “game board web.” See col. 3, line 27. The Appellant further notes that a player uses McGuire’s game board on a horizontal surface. See Fig. 6, and

Col. 3, lines 25-32. In contrast, the Appellant's game board is used upon a vertical surface. See Figs. 3, and 6-13 of the Appellant's instant application. Playing upon a vertical surface requires some means to affix a playing piece to the game surface. Playing upon a horizontal surface does not require any means to affix a playing piece.

Claims 4-8, and 23-26 require having a marker element that can be "affixed to said shade element." McGuire does not teach this limitation. McGuire has no need to enable playing pieces to be affixed to the playing surface. McGuire is teaching providing a game board on a seat cover. McGuire is not concerned with overcoming the problem of playing a game on a vertical surface. The proposed combination with Lii does not address this claim limitation. Therefore, a case for *prima facie* obviousness has not been made. The proposed combination of Li in view of McGuire does not meet all claim limitations found in claims 4-8, and 23-26.

Claim 5 additionally requires that "said marker element is removably affixable to said shade element." Neither McGuire, nor Lii, have a marker that is affixable, let alone removably affixable. Therefore claim 5 is allowable for this additional reason.

Claim 8 additionally requires that "said marker element is removably affixable to said shade element." Neither McGuire, nor Lii, have a marker that is affixable or a marker that is removably affixable. Therefore claim 8 is allowable for this additional reason.

Claim 23 further requires "a flexible, weblike shade element." Lii does not disclose a flexible, weblike shade element. Instead, Lii discloses using an "opaque plastic film 12." Nowhere in Lii's disclosure is there mention of a "weblike" film. The Appellant respectfully submits that Lii does not meet the limitation of having a flexible, weblike shade element as required by 23. Furthermore, the Examiner has provided no argument as to why a combination with McGuire would render such a feature obvious.

Claim 26 additionally requires that "said marker element is removably affixable to said shade element." Neither McGuire, nor Lii, have a marker that is affixable or a marker that is removably affixable. Therefore claim 26 is allowable for this additional reason.

The Appellant respectfully submits that the rejection of claims 3-8 should be removed by virtue of claims 3-8 dependence upon improperly rejected claim 1. Additionally, the rejection of

claims 4-8 should be removed due to the proposed combination of Lii in view of McGuire not meeting all of the claim limitations. The rejection of claims 23-26 should also be removed due to the failure of the proposed combination of Lii in view of McGuire in meeting all of the claim limitations.

Issue 3: Have claims 19-22, 30, 33-40, and 45 been improperly rejected under 35 U.S.C. §103(a) based on a proposed combination of U.S. Patent No. 5,226,467 to Lii in view of U.S. Patent No. 4,812,748 to Park?

The Appellant first notes that claims 19-22, depend on claim 1, the Appellant submits that claims 19-22, should be allowed by virtue of their dependency upon improperly rejected independent claims 1. The Appellant contends that the rejection based upon Lii is improper for the reasons set forth above under the section headed Issue 1. Claims 19-22 depend either directly or indirectly from independent claim 1 and are therefore allowable due to their dependency upon an improperly rejected independent claim.

The Examiner rejected claims 19-22, 30, 33-40, and 45 based on a proposed combination of Lii in view of U.S. Patent No. 4,812,748 to Park (hereinafter "Park"). The Appellant further submits that the Examiner has failed to establish a case for *prima facie* obviousness based on the above combination.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 265 USPQ 494, 496 (CCPA 1970).

The Examiner stated, "Park discloses a vehicle sunshade comprising suction cups including a gripping member 5,4,2, wherein, to incorporate this teaching into the sunshade of Lii '467 for its explicit purpose of mounting the sunshade would have been obvious to one of ordinary skill in the art." The Examiner points to various suction cups and a minor support assembly in order to demonstrate Park's teaching of a gripping member. However, in the Appellant's instant invention, "gripping member" is best shown by element 24. "[T]he second mounting structure 26 and the gripping element 24 are together shaped, sized and constructed in

such a manner so as to permit a consumer to disengage the second mounting structure 26 from the vehicle window 23 by manipulating the gripping element 24.” See the Appellant’s specification, page 7. Park does not provide the necessary teachings to meet the claim limitations.

Claims 19, 30, 38 and 45 require, “gripping means mounted to a distal end of said shade element for facilitating gripping of said shade element by a consumer.” Park does not disclose gripping means. At best, Park discloses anchor assembly 5 that holds the various suction cups. Park’s device is used to cover a windshield of a car. A consumer would attach the shade device to the end portions of the windshield. There is no need to provide gripping means as disclosed in the Appellant’s instant invention, since there would be no need for consumer to pull down the windshield shade taught by Park. Park extends the windshield shade along the length of the vehicle as shown in Fig. 1. The Appellant’s device is attached to a window in a vehicle; the gripping member can then be used to pull down the shade. Neither Park nor Lii meet the limitation of having “gripping means mounted to a distal end of said shade element for facilitating gripping of said shade element by a consumer.”

The Appellant submits that the rejection of claims 19, 30, 38, and 45 should be removed since a *prima facie* case for obviousness has not been made. The proposed combination of Lii in view of Park does not disclose the limitation of having “gripping means mounted to a distal end of said shade element for facilitating gripping of said shade element by a consumer.” Additionally, claims 20-22, 33-37, 39, and 40 should be allowed by virtue of their dependence on an improperly rejected base claim.

Additionally, claim 20 requires “second mounting means, attached to said gripping means.” Claim 20 further requires that “said gripping means and said second mounting means are constructed and arranged so as to facilitate disengagement of said second mounting means from the vehicle window by manipulating said gripping means.” As noted above, neither Lii, nor Park, disclose gripping means. Neither Lii, nor Park, disclose any interaction between second mounting means and gripping means. Therefore, the Appellant submits that neither Lii, nor Park alone or in combination meet every limitation in claim 20. The rejection of claim 20 is

removable for these additional reasons.

Additionally, claim 22 requires that the “gripping means is shaped, sized and attached to said suction cup in such a manner so as to permit the consumer to disengage said suction cup from the vehicle window by pulling on one end of said gripping means in a lever action.” Neither Lii, nor Park, disclose gripping means. Neither Lii, nor Park, disclose any interaction between second mounting means and gripping means, let alone any mention of “lever action.” Therefore, the Appellant submits that neither Lii, nor Park alone or in combination meet every limitation in the claims. The rejection of claim 22 is removable for these additional reasons.

Independent claims 30, 38, and 45, further require a flexible, weblike shade element. As noted above in Issue 1, Lii does not disclose this limitation. Furthermore, Park does not correct this deficiency in Lii. Park mentions using an electrostatic vinyl film, however there is no mention as to whether or not it is web-like. The Appellant submits that the rejection of claims 30, 38, and 45 should be removed since a *prima facie* case for obviousness has not been made. The proposed combination of Lii in view of Park does not disclose the limitation of having a “flexible, weblike shade element.” Additionally, claims 33-37, 39, and 40 should be allowed by virtue of their dependence on an improperly rejected base claim.

Independent claim 30 further requires a “gripping member being shaped so as to provide a lever arm of sufficient length in a direction that is perpendicular to said common axis to permit a consumer to conveniently disengage said suction cup from a vehicle window, said length being within a range of about 0.4 in. to about 2.5 in.” Park does not disclose having a gripping member shaped so as to provide a lever arm of sufficient length in a direction that is perpendicular to a common axis to permit a consumer to conveniently disengage said suction cup from a vehicle window, said length being within a range of about 0.4 in. to about 2.5 in. Anchor assembly 5, in Park, does not provide a lever arm in a direction perpendicular to a common axis. Park’s anchor assembly 5 is a long thin rod shaped device that provides no additional leverage in a perpendicular direction to a common axis (in Park’s teaching the common axis would be the length of anchor assembly 5). The Appellant submits that the rejection of claim 30 should be removed since a *prima facie* case for obviousness has not been made, neither Park, nor Lii meet

the limitations of claim 30. Additionally, claims 33-37 should be allowed by virtue of their dependence on an improperly rejected base claim.

Claims 33 and 34 further have limitations related to the force of adhesion. The Examiner does not even attempt address these claims and instead states, "As to the specific dimension of the gripping member, inasmuch as there is nothing to indicate the recited range is significant or anything more than one of numerous dimensions one having ordinary skill in the art would have found obvious for the purpose of facilitating the operation of the shade, no patentable weight has been attributed thereto." First, the Appellant notes that in claims 33 and 34 the dimensions of the mounting means are being claimed not the gripping member. Furthermore, the Appellant notes that the force of adhesion is important for the Appellant's instant invention because it is necessary to have sufficient adhesion force to sustain the shade during the course of an entertainment game and additionally to prevent accidental disengagement by children during a car trip. This differs from the adhesion force needed for the purposes for which the Lii and Park are used. The Appellant respectfully submits that neither Lii, nor Park meet the limitations of these claims. The rejection of claims 33 and 34 are removable for these additional reasons.

Claims 35 and 36 further have the limitations of having a "lever arm." Neither Lii, nor Park, disclose a "lever arm." Lii and Park further do not disclose distances related to a lever arm. The Appellant submits that the rejection of claims 35 and 36 are removable for these additional reasons.

Claim 37 further requires "at least one suction cup integrally molded with said gripping member." Neither Lii, nor Park, disclose a gripping member or a suction cup integrally molded with a gripping member. The Appellant submits that the rejection of claim 37 is removable for these additional reasons.

Independent claim 38 further requires "second mounting means...constructed and arranged so as to facilitate disengagement of said second mounting means from the second portion of the vehicle window when the second portion of the vehicle window is attempted to be lowered into the vehicle door." Both Lii and Park are shades for windshields and are not utilized on vehicle windows. Therefore, neither Lii, nor Park even contemplate providing structure to

facilitate disengagement of mounting means when a second portion of a vehicle window is attempted to be lowered into the vehicle door. Lii or Park would not require such structure since a windshield of a car is not lowered into the door. The Appellant submits that the rejection of claim 30 should be removed since a *prima facie* case for obviousness has not been made, neither Park, nor Lii meet the limitations of claim 38. Additionally, claims 39 and 40 should be allowed by virtue of their dependence on an improperly rejected base claim.

Claim 39 additionally requires a “second mounting means [that] comprises at least one suction cup that is attached to said gripping member, and wherein said gripping member is shaped so as to provide a lever arm of sufficient length to engage the vehicle door in order to disengage said suction cup from the second portion of the vehicle window when the vehicle window is attempted to be lowered into the vehicle door.” Neither Lii, nor Park, disclose a gripping member or a gripping member shaped to enable a lever arm to engage a vehicle door. The Appellant submits that the rejection of claim 39 is additionally removable for these reasons.

Claim 40 additionally requires that the “suction cup and said gripping member are configured so that said gripping member will engage the vehicle door before said suction cup when the vehicle window is attempted to be lowered into the vehicle door.” Neither Lii, nor Park, disclose a gripping member or a gripping member that will engage a vehicle door before a suction cup will. The Appellant submits that the rejection of claim 40 is removable for these additional reasons.

Independent claim 45 further requires a “gripping member being shaped so as to provide a lever arm of sufficient length from said suction cup to permit a consumer to conveniently disengage said suction cup from a vehicle window, said length being within a range of about 0.4 in. to about 2.5 in.” Park does not disclose having a gripping member being shaped so as to provide a lever arm of sufficient length from said suction cup to permit a consumer to conveniently disengage said suction cup from a vehicle window, said length being within a range of about 0.4 in. to about 2.5 in. Anchor assembly 5, in Park, does not provide a lever arm in a direction extending from the suction cups 4. Park’s anchor assembly 5 is a long thin rod shaped device that provides no additional leverage in a direction extending from suction cups 4. The

Appellant submits that the rejection of claim 45 should be removed since a *prima facie* case for obviousness has not been made, neither Park, nor Lii meet the limitations of claim 38.

VII. Conclusion

For the foregoing reasons, the Appellant respectfully submits that each of the rejections should be reversed, and all claims allowed, and such a decision is respectfully solicited.

Respectfully submitted,



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APPENDIX- CLAIMS ON APPEAL

1. A sunshade for a vehicle, comprising:

a housing;

first mounting means for mounting said housing on a vehicle window;

a drum member, rotatably mounted with respect to said housing;

a flexible, weblike shade element, said shade element being positioned so as to be wrapable about said drum member; and

a retraction mechanism for enabling said shade element to be moved from a first, fully retracted position wherein most of said shade element is wrapped about said drum member and a second, extended position wherein said shade element is at least partially unwrapped from said drum member, said retraction mechanism comprising:

a biasing mechanism for biasing said drum member so that said shade element is urged toward said first, retracted position, and

an arresting mechanism, said arresting mechanism being constructed and arranged so as to permit said drum member to be stopped when said shade element is in said second, extended position and in any of a plurality of predetermined intermediate positions that are between said first, fully retracted position and said second, extended position, said arresting mechanism further comprising controlled retraction structure for permitting a consumer to partially retract said shade element by a controlled predetermined distance;

whereby said weblike shade element may be utilized in more than one position wherein it is not being actively biased toward the retracted position.

2. A sunshade according to claim 1, wherein said housing is shaped and sized so as to preclude a person from being able to touch a portion of said shade element that is wrapped about said drum member, whereby the possibility of the person's fingers being pinched is reduced.

3. A sunshade according to claim 1, wherein said shade element has visible indicia provided

thereon for purposes that are selected from the group consisting of informational purposes, educational purposes and entertainment purposes.

4. A sunshade according to claim 3, further comprising at least one marker element, and wherein said marker element and said shade element are constructed so that said marker element may be affixed to said shade element by a consumer.
5. A sunshade according to claim 4, wherein said marker element and said shade element are constructed so that said marker element is removably affixable to said shade element by a consumer, whereby the consumer will be able to remove said marker element from said shade element at some point in time after affixing it thereto.
6. A sunshade according to claim 4, wherein said marker element is sized and shaped so as to be functionally consistent with said visible indicia that is provided on said shade element.
7. A sunshade according to claim 1, further comprising at least one marker element, and wherein said marker element and said shade element are constructed so that said marker element may be affixed to said shade element by a consumer.
8. A sunshade according to claim 7, wherein said marker element and said shade element are constructed so that said marker element is removably affixable to said shade element by a consumer, whereby the consumer will be able to remove said marker element from said shade element at some point in time after affixing it thereto.
9. A sunshade according to claim 1, wherein said biasing mechanism comprises a spring that is functionally interposed between said housing and said drum member.
10. A sunshade according to claim 1, further comprising a control element, actuatable by a

consumer, for disengaging said arresting mechanism, whereby said drum member will be urged by said biasing mechanism to cause said shade element to retract.

11. A sunshade according to claim 10, wherein said control element and said arresting mechanism are constructed and arranged to permit the consumer to actuate said control element in a first manner so as to cause said shade element to be retracted completely to said first, retracted position or in a second manner, so as to cause said controlled retraction structure to reengage in order to stop the retraction of said shade element in one of said intermediate positions.

12. A sunshade according to claim 11, wherein said control element and said arresting mechanism are constructed and arranged so that said first manner comprises actuating said control element for a first period of time and said second manner comprises actuating said control element for a second period of time that is less than said first period of time.

13. A sunshade according to claim 11, wherein said control element comprises a mechanical element that is depressible by the consumer, and said control element and said arresting mechanism are constructed and arranged so that said first manner comprises depressing said control element by a first distance and said second manner comprises depressing said control element by a second distance that is less than said first distance.

14. A sunshade according to claim 11; wherein said retraction mechanism further comprises a first clutch member and a second clutch member, and wherein said controlled retraction structure comprises releasable structure for preventing rotation of said first clutch member with respect to said housing.

15. A sunshade according to claim 14, wherein said control element comprises a mechanical element that is depressible by the consumer, and wherein said retraction mechanism is

constructed and arranged so that depression of said mechanical element by the consumer by a first distance will disengage said first clutch member from said second clutch member, whereby said shade element will be permitted to retract.

16. A sunshade according to claim 15, wherein said controlled retraction structure comprises structure for stopping rotation of said first clutch member with respect to said housing after permitting a limited amount of such rotation to occur.

17. A sunshade according to claim 16, wherein said controlled retraction structure is constructed and arranged so as to release said releasable structure for preventing rotation of said first clutch member with respect to said housing when said mechanical element is depressed by the consumer by a second distance that is less than said first distance, whereby said first clutch member will be permitted to rotate a limited distance in order to partially retract said shade element before being stopped by said controlled retraction structure.

18. A sunshade according to claim 16, wherein said controlled retraction structure is constructed and arranged to stop rotation of said first clutch member with respect to said housing after permitting no more than one rotation of said clutch member with respect to said housing to occur.

19. A sunshade according to claim 1, further comprising gripping means mounted to a distal end of said shade element for facilitating gripping of said shade element by a consumer.

20. A sunshade according to claim 19, further comprising second mounting means, attached to said gripping means, for mounting said gripping means to a vehicle window, and wherein said gripping means and said second mounting means are constructed and arranged so as to facilitate disengagement of said second mounting means from the vehicle window by manipulating said gripping means.

21. A sunshade according to claim 20, wherein said second mounting means comprises more than one suction cup.

22. A sunshade according to claim 20, wherein said second mounting means comprises a suction cup, and wherein said gripping means is shaped, sized and attached to said suction cup in such a manner so as to permit the consumer to disengage said suction cup from the vehicle window by pulling on one end of said gripping means in a lever action.

23. A sunshade assembly for a vehicle, comprising:

- a housing;

- first mounting means for mounting said housing on a vehicle window;

- a drum member, rotatably mounted with respect to said housing;

- a flexible, weblike shade element, said shade element being positioned so as to be wrapable about said drum member; and

- a retraction mechanism for enabling said shade element to be moved from a first, fully retracted position wherein most of said shade element is wrapped about said drum member and a second, extended position wherein said shade element is at least partially unwrapped from said drum member; and

- at least one marker element, said marker element and said shade element being constructed so that said marker element may be affixed to said shade element by a consumer.

24. A sunshade assembly according to claim 23, wherein said shade element has visible indicia provided thereon for purposes that are selected from the group consisting of informational purposes, educational purposes and entertainment purposes.

25. A sunshade assembly according to claim 24, wherein said marker element is sized and shaped so as to be functionally consistent with said visible indicia that is provided on said shade

element.

26. A sunshade assembly according to claim 24, wherein said marker element and said shade element are constructed so that said marker element is removably affixable to said shade element by a consumer, whereby the consumer will be able to remove said marker element from said shade element at some point in time after affixing it thereto.

27. A sunshade for a vehicle, comprising:

- a housing;
- first mounting means for mounting said housing on a vehicle window;
- a drum member, rotatably mounted with respect to said housing;
- a flexible, weblike shade element, said shade element being positioned so as to be wrapable about said drum member;
- a retraction mechanism for enabling said shade element to be moved to any one of a number of different positions including a first, retracted position wherein most of said shade element is wrapped about said drum member and a second, extended position wherein said shade element is at least partially unwrapped from said drum member; and wherein
- said housing is shaped and sized so as to preclude a person from being able to touch a portion of said shade element that is wrapped about said drum member, whereby the possibility of the person's fingers being pinched is reduced.

Claims 28-29 (Canceled)

30. A sunshade for a vehicle, comprising:

- a housing;
- first mounting means for mounting said housing on a vehicle window;
- a drum member, rotatably mounted with respect to said housing;
- a flexible, weblike shade element, said shade element being positioned so as to be

wrapable about said drum member;

a retraction mechanism for enabling said shade element to be moved to any one of a number of different positions including a first, retracted position wherein most of said shade element is wrapped about said drum member and a second, extended position wherein said shade element is at least partially unwrapped from said drum member;

a gripping member, mounted to a distal end of said shade element, for facilitating gripping of said shade element by a consumer; and

second mounting means, attached to said gripping member, for mounting said gripping member to a vehicle window, said second mounting means comprising at least two suction cups, said suction cups being aligned with each other along a common axis, said gripping member being shaped so as to provide a lever arm of sufficient length in a direction that is perpendicular to said common axis to permit a consumer to conveniently disengage said suction cup from a vehicle window, said length being within a range of about 0.4 in. to about 2.5 in.

Claims 31-32 (Canceled)

33. A sunshade for a vehicle according to claim 30, wherein each of said suction cups are constructed and arranged so as to have a force of adhesion to a vehicle window that is within a range of about 0.1 lb. of force to about 3.5 lb. of force

34. A sunshade for a vehicle according to claim 33, wherein each of said suction cups are constructed and arranged so as to have a force of adhesion to a vehicle window that is within a range of about 0.5 lb. of force to about 2.8 lb. of force.

35. A sunshade for a vehicle according to claim 30, wherein said gripping member is shaped so that said lever arm extends for a distance that is within a range of about 0.4 in. to about 2.5 in.

36. A sunshade for a vehicle according to claim 35, wherein said gripping member is shaped so

that said lever arm extends for a distance that is within a range of about 0.5 in. to about 1.5 in.

37. A sunshade for a vehicle according to claim 30, wherein said at least one suction cup is integrally molded with said gripping member.

38. A sunshade for a vehicle having at least one vehicle door and a vehicle window that can be raised and lowered out of and into the door, comprising:

- a housing;

- first mounting means for mounting said housing on a first portion of the vehicle window;

- a drum member, rotatably mounted with respect to said housing;

- a flexible, weblike shade element, said shade element being positioned so as to be wrapable about said drum member;

- a retraction mechanism for enabling said shade element to be moved to any one of a number of different positions including a first, retracted position wherein most of said shade element is wrapped about said drum member and a second, extended position wherein said shade element is at least partially unwrapped from said drum member;

- a gripping member, mounted to a distal end of said shade element, for facilitating gripping of said shade element by a consumer; and

- second mounting means, attached to said gripping member, for mounting said gripping member to a second portion of the vehicle window, and wherein said gripping member and said second mounting means are constructed and arranged so as to facilitate disengagement of said second mounting means from the second portion of the vehicle window when the second portion of the vehicle window is attempted to be lowered into the vehicle door.

39. A sunshade for a vehicle according to claim 38, wherein said second mounting means comprises at least one suction cup that is attached to said gripping member, and wherein said gripping member is shaped so as to provide a lever arm of sufficient length to engage the vehicle door in order to disengage said suction cup from the second portion of the vehicle window when

the vehicle window is attempted to be lowered into the vehicle door.

40. A sunshade for a vehicle according to claim 39, wherein said suction cup and said gripping member are configured so that said gripping member will engage the vehicle door before said suction cup when the vehicle window is attempted to be lowered into the vehicle door.

41. A sunshade for a vehicle, comprising:

- a housing;
- first mounting means for mounting said housing on a vehicle window;
- a drum member, rotatably mounted with respect to said housing;
- a flexible, weblike shade element, said shade element being positioned so as to be wrapable about said drum member; and
- a retraction mechanism for enabling a consumer by depressing a mechanical control element using just one hand to move the shade element to any one of a plurality of different predetermined indexed positions including a first, retracted position wherein most of said shade element is wrapped about said drum member, a second, extended position wherein said shade element is at least partially unwrapped from said drum member and at least one predetermined indexed intermediate position.

Claim 42 (Canceled)

43. A sunshade according to claim 42, wherein said retraction mechanism is constructed and arranged to permit the consumer to actuate said control element in a first manner so as to cause said shade element to be retracted completely to said first, retracted position or in a second manner, so as to cause said retraction mechanism to reengage in order to stop the retraction of said shade element in said predetermined indexed intermediate position.

44. A sunshade according to claim 43, wherein said retraction mechanism is constructed and

arranged so that said first manner comprises depressing said mechanical control element by a first distance and said second manner comprises depressing said control element by a second distance that is less than said first distance.

45. A sunshade for a vehicle, comprising:

a housing;

first mounting means for mounting said housing on a vehicle window;

a drum member, rotatably mounted with respect to said housing;

a flexible, weblike shade element, said shade element being positioned so as to be wrapable about said drum member;

a retraction mechanism for enabling said shade element to be moved to any one of a number of different positions including a first, retracted position wherein most of said shade element is wrapped about said drum member and a second, extended position wherein said shade element is at least partially unwrapped from said drum member;

a gripping member, mounted to a distal end of said shade element, for facilitating gripping of said shade element by a consumer; and

second mounting means, attached to said gripping member, for mounting said gripping member to a vehicle window, said second mounting means comprising at least one suction cup, said gripping member being shaped so as to provide a lever arm of sufficient length from said suction cup to permit a consumer to conveniently disengage said suction cup from a vehicle window, said length being within a range of about 0.4 in. to about 2.5 in.